

# Productivity Commission Draft Report on Chemicals and Plastics Regulation

AGD notes the Productivity Commission draft report on Chemicals and Plastics Regulation and makes the following comments.

## Risk Management

The premise “Chemical hazard and risk assessment is a science-based task best undertaken by an independent national body of technical experts”<sup>1</sup> is an unsound generalisation and should be removed from the draft report. It is not supported by risk management principles or best practice. Central to the risk management standard AS/NZS: 4360 is the concept that the owner of an asset is also the owner of the protective security risk ie the CEO is also the Chief Risk Manager. In this, he or she needs to decide the level of risk that the organisation is willing to accept.

AGD agrees that the science based inputs to a risk assessment, those relating to the physical properties /hazards arising from a chemical, should be left to experts. However, a decision on how to treat a risk can only be made by the risk owner as it requires that owner to make subjective decisions to determine what their tolerance to risk is and what measures they are willing to implement to treat any residual risk. It is a balancing act between the amount of risk that the risk owner is willing to accept if something goes wrong and the amount of risk that same person is willing and able to afford to mitigate. Where the risk owner is the community, it is appropriate for government to make the decision on how to treat risk on their behalf.

This principle is demonstrated as follows: It is the board of a publicly listed company that makes the decision on whether to risk embarking on a project or a new venture. The board’s decision might be influenced by data from a range of in-sourced and outsourced expertise, but in the end, it is the board that decides whether and how to invest in the project on behalf of the company.

In the same way, where the risk is related to national security, the ultimate risk owner and therefore decision-maker is the executive level of the Australian Government. Although the decision might be influenced by data from a range of in-sourced and outsourced expertise, in the end it is the Government that decides how much risk it is willing to take on behalf of the Australian people.

Lastly, the statement that “administration of risk management standards is primarily a state/territory function”<sup>2</sup> should read “administration of risk management is primarily a state/territory function”. The Australian Government recognises only one risk management standard, the Australian/New Zealand Risk Management standard AS/NZS 4360:2004 administered by Standards Australia.<sup>3</sup>

## Overview

pXXIX AGD agrees that in principle, without uniformity, national security could be compromised by inadequacies of regulation or administration in one or more of the jurisdictions and notes that this aligns with the principles outlined in the draft COAG report on Chemicals of Security Concern

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<sup>1</sup> Productivity Commission Draft Report p29

<sup>2</sup> Productivity Commission Draft Report pXXXVI

<sup>3</sup> <http://www.standards.org.au/>

## Chapter 3. National policy formulation and system governance

### Recommendation 3.1

The Productivity Commission draft report suggests that COAG establish a Standing Committee on Chemicals under the Australian Health Ministers' Conference to provide consistency of policy settings across all areas of chemicals regulation.

In terms of national security policy for chemicals, whilst AGD acknowledges the importance of consistency of chemical policy across government, we are of the view that in terms of chemicals of security concern, the consultation processes outlined in the draft COAG "Report on Chemicals of Security Concern" would be sufficient and that additional layers of reporting, such as the proposed *Standing Committee on Chemicals* could cause confusion and add to the regulatory burden.

## Chapter 9. National Security

AGD notes the recommendations in Chapter 9 and that they are broadly consistent with the principles underpinning the COAG draft "Report on Chemicals of Security Concern".

### Recommendation 9.1

In its report on Plastics and Chemical Regulation, the Productivity has recommended that 'A nationally uniform approach to conducting security checks for access to security sensitive ammonium nitrate (SSAN) should be implemented, irrespective of other harmonisation measures. This process should be managed by the Australian Government, through AusCheck. The information should be shared across jurisdictions using a database that reports current, refused or revoked security clearances.'

At present, there are a number of issues that impede the implementation of a nationally uniform approach to conducting security checks for access to SSAN. For example, different checking requirements mean that not all jurisdictions recognise each other's security checks, and systems for the communication of security checking information between jurisdictions are limited. The impact of this is that it is possible for a person who has received an adverse security check in one jurisdiction to apply successfully in another. In addition, companies that operate in multiple jurisdictions may be required to seek separate security checks for their employees in each jurisdiction.

The Attorney-General's Department supports this recommendation which seeks to provide support to agencies that licence SSAN-related activity by identifying high-risk individuals, by applying a consistent interpretation of government requirements and providing a recommendation to the relevant agencies. AusCheck was established to achieve similar policy objectives in relation to background checking for the aviation and maritime security identification card schemes. However, there are a number of legislative and administrative challenges that would need to be overcome in order to implement the recommendation.

The *AusCheck Act 2007* currently permits AusCheck to coordinate background checks for the purposes of the Aviation and Maritime Security Identification Card scheme. Expanding AusCheck's role to include background checks for SSAN licensing would require changes to the AusCheck Act.

AusCheck's mission is to be Australia's pre-eminent background checking service by:

- offering connectivity and single point access to minimise background checking duplication
- maintaining accurate databases of applicants and cardholders, with appropriate data integrity features
- providing fast, fair and reliable background checking services, and
- keeping costs to users to a minimum.

AusCheck procedures involve examining the criminal history, and matters relevant to a security assessment of the individual. The efficiency and consistency of background checks has significantly improved due to AusCheck's role as a central agency dedicated to these assessments.

AusCheck has received in excess of 63000 requests for background checking within the first 6 months of operation. AusCheck has processed 97.7% of all applications received in less than 20 days. 65% of all applications were finalised in less than 5 days.

AusCheck use a state of the art information technology system that speeds up the processing of applications by sending electronic requests for background checking information to the checking partners.

AusCheck operates on a full cost recovery basis. The only fees charged by AusCheck are the cost of providing the service. This user-pays based approach reflects the actual cost of the service to the users and reduces the demand on the taxpayer. While fees vary depending on the extent of the check, AusCheck's average fee for background checking is less than \$85 per application.

AusCheck clients report that not only is the AusCheck system faster, it reduces administrative costs as fewer resources are required to chase outstanding applications and reconcile complex billing arrangements.

## **Recommendation 9.2**

AGD supports the principle of harmonisation of security regulations for security sensitive ammonium nitrate (SSAN) on the basis that harmonisation of regulations would make it easier for legitimate users of SSAN to meet their obligations in all Australian jurisdictions and for law enforcement to identify potential misuse.

## **Recommendation 9.4**

AGD supports this recommendation and acknowledges that the report states that the Commission is generally supportive<sup>4</sup> of the Chemical Security Management Framework outlined in the COAG Review of Hazardous Materials draft "Report on Chemicals of Security Concern".

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<sup>4</sup> Productivity Commission Draft Report p248